

# Town Council Meeting: 11 July 2011



Town of Garrett Park  
PO Box 84  
4600 Waverly Avenue  
Garrett Park, MD 20896

Regular Meeting of Town Council  
Garrett Park Town Hall  
10814 Kenilworth Avenue  
Garrett Park, MD 20896

---

## MINUTES

**Call to Order:** Mayor Keller called the meeting to order at 7:35 PM. Present were Councilmembers Irons, Mandel, Petito, Schulp, and Wegner. Also present was Administrator Pratt, Chair of the Setback Advisory Committee (SAC) Harry Gordon, Chair of the Parks and Open Space Committee (POSCO) Ida Sullivan, Andrea and Jason Birdsong, and a number of Town residents.

**Approval of Agenda:** The agenda was approved as posted, with the addition of a discussion of the proposed Black Market Bistro September benefit, without objection.

### **Public Hearing:**

- Continued Hearing: Variance Application 20110419-VA01, 4700 Waverly Avenue - Birdsong: Relief from setback requirements - Mayor Keller called the continued hearing back into order at 7:35 PM, and turned the floor over to Councilmember Irons, who noted that the Council had voted at the June meeting to continue the hearing in order to gather more information from the SAC and the applicant. Additional information requested from the SAC was:

- 1) To research and comment on the original variances granted by the County and the Town in 1962 and 1963 that permitted the initial construction of the dwelling at 4700 Waverly Avenue in order for the Council to better understand the extent and effect of the requested additional variance;
- 2) To research comparable lots in Town and comment on these comparables; and
- 3) To draw up a plan that clearly indicated existing buildable area on the lot at 4700 Waverly Avenue.

Councilmember Irons reported that SAC member Ed Shawaker had responded to the first request and asked that his response be added to the hearing record (attached to these minutes), and she requested that Harry Gordon present his report on comparable lots in Town. Mr. Gordon stated that he had reviewed other corner lots that were 50' wide in one direction to see if there were similar lots, and showed the Council a marked up Town map, noting that he had sent a descriptive email to the Council as a report

(attached to these minutes). Mr. Gordon said that his conclusion was that other properties have some similar characteristics to the lot in question, but very few if any are as small; he stated that if not unique in Town, the 4700 Waverly lot was very nearly unique. Councilmember Schulp asked how many other similar properties existed in Town, and Mr. Gordon answered that there were approximately 10 but, as reported, they differed from the subject property in size, configuration, or other characteristics. Mayor Keller asked about the applicability of the Montgomery County Zoning provision that allows certain corner lots to designate one side on the public way as the front yard and the other as a side yard with a resultant substantially reduced required set back. Mr. Gordon replied that this part of the Montgomery County zoning ordinance is very specific as to which corner lots qualify for the lesser 15' setback requirement, and 4700 Waverly Avenue does not meet the necessary standards. Councilmember Irons referred the Council to a sketch prepared by Mr. Gordon (attached) showing buildable area remaining on the lot in question under current zoning. Councilmember Schulp noted that it amounted to an area 3.5FT x 18FT, or approximately 63SF.

Councilmember Irons then referred the Council to plans submitted by the applicants showing the current and proposed floor plans for the home at 4700 Waverly Avenue, noting that the plans are available for review at the Town Office.

Councilmember Petito **MOVED**

That variance request 20110419-VA01 be approved, and that the hearing record be referred to the Town's attorney for the drafting of a formal opinion. Councilmember Schulp seconded the motion. Councilmember Irons read a statement in support of granting the variance (attached). Councilmember Wegner stated that he did not think that either an exceptional or undue hardship or practical difficulty had been proven, given that a variance had already been granted to permit the home's construction, that the applicants should have been aware of the constraints when they purchased the home, and therefore he does not see a demonstrated hardship, and therefore he cannot support granting the variance. Councilmember Mandel commented that his research indicated that variance rulings regarding hardship and/or practical difficulty show a lower threshold for practical difficulty, that he found the HPC report regarding harmony with the neighborhood an important finding, and that he was prepared to support granting the variance. . Councilmember Petito concurred with both Councilmembers Irons and Mandel, noting that his own research supported the lower threshold for practical difficulty applied to "area variances", which was the type of variance applied for here. He also noted that (i) while the Council was not bound by the prior action of the Town granting a variance with respect to this lot, it could take that into consideration as an indication that the lot was unusual, and (ii) the unusual characteristics of the lot were not the result of the conduct of the Birdsongs or prior owners, since the subdivision creating the lot predated

the zoning in effect when the previous variance was granted. Councilmember Schulp also concurred. Councilmember Irons asked if the applicants had anything to add and they indicated that they did not. After brief discussion, Mayor Keller called for the vote on the motion, which **PASSED** with Councilmembers Irons, Mandel, Petito, and Schulp voting 'Aye,' and Councilmember Wegner voting 'Nay.' Mayor Keller stated that he would undertake initial work on getting an opinion drafted by the Town's lawyer, and asked the Council to submit any statements for aggregation into a working outline to submit to counsel.

**Presentations by Residents:**

- Resident Liz King queried when the Council would have a meeting to establish its process in considering Land Use Task Force recommendations. Councilmember Irons responded that the Council would work over the summer to develop initial proposed legislation on several recommendations, potentially to be introduced at the September meeting. Garrett Park Citizens Association (GPCA) President Mario Grande indicated that the GPCA would also be focusing on a September meeting, and will give residents as much notice as possible.

**Mayor's Report:**

- Mayor Keller reported that the Community Center renovation was going quickly and well.
- The Mayor reported that the Garrett Park Elementary School (GPES) reconstruction project had been delayed by the Washington Suburban Sanitary Commission (WSSC) due to a dispute over sewer easements. In order to get the project moving again, the Town has been forced to give an unrestricted sewer easement to WSSC in northerly twenty (20) feet of the 4800 block of Oxford Street. In recognition of the Town's concession, various undertakings have come from the Montgomery County Board of Education, including agreeing to pave the Community Center parking area and circle at Board of Education expense.
- Mayor Keller said that he feared the Post Office's curtailed Friday hours and Saturday closing over the weekend of the Fourth is a stalking horse for permanent Saturday closing; he will continue to work with Congressman Van Hollan's office on Post Office matters.

**Councilmember's Reports on Areas of Responsibility:**

- Councilmember Mandel reported that the Archives Committee was "going great guns," that computer hardware and software had been purchased, and that resident David Altar was assisting in getting everything set up and running.

- Councilmember Mandel then raised the matter of the proposed Black Market Bistro charity event on Saturday, Sept 10, noting that there were no established criteria for deciding how to manage such an event, and offering to discuss with Black Market ways to organize a Saturday event that meets certain Town concerns. Councilmember Irons noted that during last year's Sunday event she had been approached by residents on Montrose concerned about traffic. Councilmember Wegner noted that there had been no clear articulation of particulars regarding busses, parking and signage, and how to manage conflicts with Post Office and Farmer's market activities. Councilmember Schulp pointed out that Holy Cross Church held services at 5:00 PM on Saturdays, so access to their parking lot for potential off-site parking will be restricted. Councilmember Petito stated that while he thought a Saturday event was possible, given proper planning, Sunday was a preferable day and that certain of the concerns raised about the event would apply whether it was held on a Saturday or a Sunday. Councilmember Wegner offered to assist Councilmember Mandel in discussions with the Black Market.
- Councilmember Wegner reported on a meeting on the previous Friday morning with residents of North Kenilworth, Councilmember Mandel, Administrator Pratt and Adolfo Carpio of Chester Engineering to review private drainage issues, noting that Mr. Carpio will generate draft plans for review and comment.
- Councilmember Petito introduced Ida Sullivan and Jim Fitzgerald from the Parks and Open Space Committee, who reported on the Maryland Department of Environment's Program Open Space (DOE-POS) call for FY 2013 Park improvements grant proposals. Noting that the committee has not had time to build a consensus as to what should be done with the Cambria Court/Manny's Woods property, Ms. Sullivan and Mr. Fitzgerald stated that the committee would like to begin work on a proposal for FY 2014, having been assured that DOE-POS would be soliciting another round of proposals next year. Ms. Sullivan indicated that the committee would like funds to develop this proposal with the assistance of professionals, with two of whom they had met and discussed the project. Ms. Sullivan noted further that the DOE-POS grant is 100% reimbursement. There was extended discussion. Mayor Keller asked if there was a sense of Council on dollar figure to make available for planning-related activities, and, after discussion, it was the sense of the Council that funds made available not to exceed \$1,000.
- Councilmember Mandel reported on his research into Mr. Witten's application for a driveway on Kenilworth Avenue and two more on Oxford Street, noting that he had visited the site, spoke to neighbors and other residents, and that it was fairly universal that residents felt new driveways on Oxford Street is not a good idea, and that, therefore, he had

no recommendation to the Council to change its June decision, which let stand the Town Administrator's grant of the requested Kenilworth Ave. driveway and denial of the two driveways on Oxford Street.

**Approval of Minutes:**

- 06/13/2011 Regular Council Meeting - Action was deferred.

**Action/Discussion:**

- FY 2011 Budget Transfers - Mayor Keller reviewed the proposed transfers within the FY 2011 budget (attached) with the Council.

Councilmember Irons **MOVED**

That the Council amend the FY 2011 Operating Budget, Expenses, as enumerated in the column "Changes to Budget" under the heading "FY 2011 EOY Budget" in the spreadsheet attached to these minutes. Councilmember Wegner seconded the motion. Mayor Keller noted that the changes resulted in a reduction of \$63,190 in the FY 2011 Operating budget to a total of \$901,200. There was brief discussion of the changes, which involved an increase of approximately \$10,000 in certain major line items and a decrease of approximately \$75,000 in other major line items, with Town expenditures coming in under budget for FY 2011.. Resident Ken Schwartz noted that good budgetary practice does not allow for changing budget after end of a fiscal year, that in his view such action probably violates state law and the Town Charter, and should not to be repeated. The Council thanked Mr. Schwartz for his views, said that the Town's auditors would be consulted on this point, and assured Mr. Schwartz that the Town did not intend to make this a regular practice. Resident Chuck Berry queried the increase in legal fees. Mayor Keller explained that they were almost entirely related to the acquisition of the Garrett Park Estates Local Park, GPES projects, WSSC easements and other legal work not related to the Garrett Park Nursery School (GPNS), and that the increases were unanticipated and a major reason for the delaying of proposed transfers. Mayor Keller called for the vote, and the motion was **PASSED** unanimously.

- Capital Projects Update - Mayor Keller presented an update on the ongoing capital projects (attached), noting that even though the timing had slipped, it was still anticipated that all the work could be completed before Thanksgiving. Councilmember Mandel noted that the Council's decision to install a speed hump on lower Rokeby Avenue was not included in the capital projects update and should not be overlooked, to which Mayor Keller agreed.
- Adoption of Ordinance 2011-04: Amending the FY 2012 Capital Budget - Mayor Keller presented ordinance for adoption. After brief discussion Councilmember Mandel **MOVED**

That Ordinance 2011-04 be adopted as introduced at the June Council meeting. Councilmember Irons seconded the motion, which **PASSED** unanimously.

**Town Administrator Report:**

- Monthly Financial Report - Administrator Pratt reviewed the June financial report with the Council, noting that the FY 2011 books were still open and that the final amounts in a number of accounts were likely to change.
- Permits Report - Administrator Pratt reported that there were no new permits applied for since the last report.

**Adjournment:** The meeting adjourned at 10:05 PM.

Respectfully submitted,

[TOWN SEAL]

Edwin Pratt, Jr., Clerk-Treasurer

### **Attachments**

From: Edward Shawaker  
Subject: Re: 4700 Waverly Avenue - Variance Hearing  
Date: Sunday, June 19, 2011, 3:33 PM

Hi Harry, Pat and Beth

In response to paragraph 1 of the information that the TC requested:

In 1962 the County Board of Appeals granted a variance of 10 feet from the then required 25 foot setback on Montrose Avenue, so the building had to be built no closer than 15 feet from Montrose. This is the only variance the Board of Appeals granted, though apparently under the County ordinance a setback of 7 or 8 feet was also required for the neighboring lot along Waverly. The planned construction did not require a variance there.

In 1963 the Town granted a variance allowing construction no closer than 18 feet from Montrose. The Town also granted a variance of 3 feet from the 10 foot setback required by the Town from the neighbor's land on Waverly, allowing construction no closer than 7 feet from that land.

In the present case, the requested variance would seek a setback of 13 feet from Montrose Avenue for the covered porch and a setback of 22.8 feet from Montrose for the two-story addition. It would also seek a setback of 8.8 feet from the neighboring property on Waverly.

I hope this is what the TC was looking for.

Ed

From: Gordon, Harry [mailto:Harry.Gordon@stantec.com]

Sent: Friday, July 08, 2011 10:07 AM

Subject: RE: 4700 Waverly Avenue - Variance Hearing - SAC has more to do

I did some additional research on the second part of the question. As you thought, Beth, there are some other corner lots to consider. Here is my assessment, starting with the four lots that Pat identified:

4710 Oxford - 50' wide corner lot but much larger than the subject property

4711 Oxford - 50' wide corner lot but much larger. Existing building is less than 15 feet from Oxford property line and MC has already told the owner (Mr. Colella) that a permit will not be granted for an expanded front porch.

4800 Oxford - 50' wide corner lot near GPES but much larger.

NW corner of Oxford and Kenilworth - Pat identified this as a lot but it looks as if it already has an accessory building on it and in any case is much larger.

This may be connected to 10802 Kenilworth.

Corner of Clermont and Strathmore - the NE corner (Barbara Shidler) and SE corner are approximately 60' wide and much deeper than the subject property. The SW corner is about 50' wide and somewhat larger than the subject property but the existing house already covers a large percentage of the lot and a variance would be questionable. The NW corner (may be 10902 Clermont) is substantially larger than the subject property in both directions - not comparable.

Corner of Keswick and Strathmore - this is a very odd lot - narrower than 50' and about 200' deep. The existing house is almost on the Keswick property line. Not comparable.

The three lots at the Clermont triangle (across from Chris and Henri) would each have two fronts but they are so oddly shaped that I don't think they are comparable.

11018 Montrose Av - Howards - small lot but about 60' deep and it would not have the EBL issue because of the placement of the adjacent houses.

11209 Kenilworth - Retherfords - small lot but about 75' deep and it would not have the EBL issue because of the placement of the existing house at 11207 Kenilworth.

NE corner of Kenilworth and Albemarle (across from Jeremy and Dee)- small lot and existing house appears to occupy a large percentage of the lot.

I have a map that shows all of this but it is not in an electronic format so I can show it to you but not send it to you.